

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

GULF RESTORATION NETWORK

PLAINTIFF

v.

CAUSE NO. 1:17CV130-LG-RHW

OSCAR RENDA CONTRACTING, INC.

DEFENDANT

**ORDER GRANTING MOTION TO
BIFURCATE LIABILITY AND PENALTY PHASES**

BEFORE THE COURT is the [58] Motion to Bifurcate Liability and Penalty Phases filed by the plaintiff Gulf Restoration Network. The defendant Oscar Renda Contracting Inc. filed its response in opposition, and the Network replied.

Bifurcation is appropriate where convenient, economical, or necessary to avoid prejudice. *See* Fed. R. Civ. P. 42(b) (“For convenience, to avoid prejudice, or expedite and economize, the court may order a separate trial of one or more separate issues, claims, crossclaims, counterclaims, or third party claims.”) However, “the issue to be tried must be so distinct and separate from the others that a trial of it alone may be had without injustice.” *McDaniel v. Anheuser-Busch, Inc.*, 987 F. 2d 298, 305 (5th Cir. 1993) (quoting *Swofford v. B. & W., Inc.*, 336 F. 2d 406, 415 (5th Cir. 1964)).

Because this is a Clean Water Act case, a jury will hear and determine the liability portion, but the Court alone will assess the penalty. *See Tull v. United States*, 481 U.S. 412, 427 (1987) (“[t]he trial court and not the jury should determine the amount of penalty, if any.”) The factors the Court must consider are “the seriousness of the violation or violations, the economic benefit (if any) resulting

from the violation, any history of such violations, any good-faith efforts to comply with the applicable requirements, the economic impact of the penalty on the violator, and such other matters as justice may require.” 33 U.S.C. § 1319(d).

Clearly, the jury will hear some evidence regarding these factors because it will be relevant to liability, but there is no need for them to hear any evidence regarding the financial factors. The matter of an appropriate penalty is separate and distinct from the jury’s determination of Clean Water Act violations. Therefore, the Court will exercise its discretion to bifurcate the liability and penalty phases of the trial in this case.

IT IS THEREFORE ORDERED AND ADJUDGED that the [58] Motion to Bifurcate Liability and Penalty Phases filed by the plaintiff Gulf Restoration Network is **GRANTED**. In the event that the jury trial concludes with a verdict in favor of the plaintiff, the Court will immediately commence with the penalty phase.

SO ORDERED AND ADJUDGED this the 14th day of December, 2018.

s/ Louis Guirola, Jr.

LOUIS GUIROLA, JR.
UNITED STATES DISTRICT JUDGE